

# *Code of Alabama*

## **Title 40, Chapter 9F, Article 2**

### **Tax Credit for Historic Structures**

#### **Section 40-9F-30**

##### **Applicability.**

This chapter shall apply to qualified structures throughout the State of Alabama.  
(Act 2017-380, §1.)

#### **Section 40-9F-31**

##### **Definitions.**

As used in this article, the following terms have the following meanings:

- 1) **CERTIFIED HISTORIC STRUCTURE.** A property located in this state which is at least 60 years of age, unless the structure is a historic structure located within the boundaries of a National Monument or Park as declared by the United States Congress or the President of the United States, in which case the federal age provisions shall apply, and is certified by the Alabama Historical Commission as being individually listed in the National Register of Historic Places, eligible for listing in the National Register of Historic Places, or certified by the commission as contributing to the historic significance of a Registered Historic District. For applications submitted after June 1, 2023, a property must be 75 years of age.
- 2) **CERTIFIED REHABILITATION.** Repairs or alterations to a certified historic structure that is certified by the commission as meeting the U.S. Secretary of the Interior's Standards for Rehabilitation which meet the requirements of 26 U.S.C. § 47.
- 3) **COMMISSION.** The Alabama Historical Commission or its successor.
- 4) **COMMITTEE.** The Historic Tax Credit Evaluating Committee established by this article.
- 5) **DEPARTMENT.** The Alabama Department of Revenue or its successor.
- 6) **DISQUALIFYING USE.** Any use of a certified historic structure that is occupied by an owner and used exclusively as a primary or secondary residence.
- 7) **OWNER.** Any taxpayer filing a State of Alabama income tax return or any entity that is exempt from federal income taxation pursuant to 26 U.S.C. § 501, that owns title to a qualified structure or owns a leasehold interest in a qualified structure for a term of not less than 39 years. An owner as defined herein shall not be considered a private user as defined in Section 40-9A-1.
- 8) **QUALIFIED REHABILITATION EXPENDITURES.** Any expenditure as defined under 26 U.S.C. § 47, as amended, and the related regulations thereunder, and other reasonable expenses and costs expended in the rehabilitation of a qualified structure. Qualified rehabilitation expenditures do not include the cost of acquisition of the qualified structure, the personal labor by the owner, or any cost associated with the rehabilitation of an outbuilding of the qualified structure, unless the outbuilding is certified by the commission to contribute to the historical significance of the qualified structure.
- 9) **QUALIFIED STRUCTURE.** Certified historic structures that are certified by the commission as meeting the requirements contained in 26 U.S.C. § 47.
- 10) **REGISTERED HISTORIC DISTRICT.** Any district listed in the National Register of Historic Places and any district that is either of the following:
  - a. Designated under Alabama or local law as containing criteria that substantially achieves the purpose of preserving and rehabilitating buildings of historic significance to the district.

b. Certified by the U.S. Secretary of the Interior as meeting substantially all of the requirements for the listing of districts in the National Register of Historic Places.

11) REHABILITATION PLAN. Construction plans and specifications for the proposed rehabilitation of a qualified structure in sufficient detail to enable the commission to evaluate compliance with the standards developed under this article.

12) SUBSTANTIAL REHABILITATION. Rehabilitation of a qualified structure for which the qualified rehabilitation expenditures exceed 50 percent of the owner's original purchase price of the qualified structure or twenty-five thousand dollars (\$25,000), whichever is greater.

*(Act 2017-380, §2; Act 2021-431, §1; Act 2023-522, §1.)*

## **Section 40-9F-32**

### **Procedures for Rehabilitation of Qualified Structures; Tax Credits; Review; Audit; Fees; Report to Legislature**

(a) The commission shall develop standards for the approval of the substantial rehabilitation of qualified structures for which a tax credit is sought. The standards shall take into account whether the substantial rehabilitation of a qualified structure is consistent with the historic character of the structure or of the Registered Historic District in which the property is located.

(b) Prior to beginning any substantial rehabilitation work on a qualified structure, the owner shall submit an application and rehabilitation plan to the commission and an estimate of the qualified rehabilitation expenditures under the rehabilitation plan; provided, however, that the owner, at its own risk, may incur qualified rehabilitation expenditures no earlier than six months prior to the submission of the application and rehabilitation plan that are limited to architectural, engineering, and land surveying fees and related soft costs and any costs related to the protection of the qualified structure from deterioration.

(c) The commission shall review the application and rehabilitation plan to determine that the information contained therein is complete. If the commission determines that the application and rehabilitation plan are complete, the commission shall reserve for the benefit of the owner an allocation for a tax credit as provided in Section 40-9F-4 and the commission shall notify the owner in writing of the amount of the reservation. The reservation of tax credits does not entitle the owner to an issuance of tax credits until the owner complies with all other requirements of this chapter for the issuance of the tax credits. The reservation of tax credits shall be made by the commission in the order in which completed applications and rehabilitation plans are received by the commission, and the reservation of tax credits shall be issued by the commission within a reasonable time, not to exceed 90 days from the filing of a completed application and rehabilitation plan. Applications received by the commission on the same day shall go through a lottery process to determine the order in which the applications will be reviewed by the commission. Only the property for which a property address, legal description or other specific location is provided in the application shall be reviewed. Ownership of an entity that is the owner of property contained in the application shall not be a factor in the commission's review of the application and no subsequent change in the ownership structure of such entity shall result in the loss or rescission of a reservation of tax credits. The owner shall not be permitted to request the review of another property for approval in the place of the property contained in the application. Any application disapproved by the commission shall be removed from the review process, and the commission shall notify the owner in writing of the decision to remove the application. Disapproved applications shall lose their priority in the review process. A disapproved application may be resubmitted, but shall be deemed to be a new submission for purposes of the priority procedures described in this section and may be charged a new application fee. In the event that the commission grants reservations for tax credits equal to the total amount available for reservations during the tax year, all owners with applications then awaiting approval or thereafter submitted for approval shall be notified by the commission that no additional approvals shall be granted during that tax year and shall be notified of the priority number given to the owner's application then awaiting approval. The applications shall remain in priority status for two years from the date of the original application and shall be considered for reservations of tax credits in the priority order established in

this section in the event that additional credits become available due to the rescission of approvals or when a new tax year's allocation of tax credits becomes available.

Owners receiving a reservation of tax credits shall commence rehabilitation, if rehabilitation has not previously begun, within 18 months of the date of issuance of the written notice from the commission to the owner granting the reservation of tax credits. "Commencement of rehabilitation" shall mean that, as of the date in which actual physical work contemplated by the rehabilitation plan submitted with the application has begun, the owner has incurred no less than 20 percent of the estimated costs of rehabilitation provided in the application. Owners receiving a reservation of tax credits shall submit evidence of compliance with the provisions of this subsection. If the commission determines that an owner has failed to comply with the requirements provided under this section, the reservation of tax credits for the owner may be rescinded and, if so, the amount of tax credits shall then be included in the total amount of available tax credits provided for in subsection (c) of Section 40-9F-4, from which reservations may be granted. Any owner whose reservation of tax credits shall be rescinded shall be notified of the rescission from the commission and, upon receipt of the notice, may submit a new application but may be charged a new application fee.

(d) Following the completion of a substantial rehabilitation of a qualified structure, the owner shall notify the commission that the substantial rehabilitation has been completed and shall certify the qualified rehabilitation expenditures incurred with respect to the rehabilitation plan. In addition, the owner shall provide the commission with: (i) a cost and expense certification, prepared by a licensed certified public accountant that is not an affiliate of the owner, certifying the total qualified rehabilitation expenditures and the total amount of tax credits against any state tax due that is specified in this chapter for which the owner is eligible under Section 40-9F-4 and, if the qualified rehabilitation expenditures exceed two hundred thousand dollars (\$200,000), the cost and expense certification must be audited by the licensed certified public accountant; and (ii) an appraisal of the qualified structure prepared by an independent MAI designated and licensed real estate appraiser. The commission shall review the documentation of the rehabilitation and verify its compliance with the rehabilitation plan. Within 90 days after receipt of the foregoing documentation from the owner, the commission shall issue a tax credit certificate in an amount equivalent to the lesser of: (i) the amount of the tax credit reservation issued for the project under the provisions of subsection (c), or (ii) 25 percent of the actual qualified rehabilitation expenditures for certified historic structures and 10 percent of the actual qualified rehabilitation expenditures for qualified pre-1936 non-historic structures. In the event the amount of qualified rehabilitation expenditures incurred by the owner would result in the issuance of an amount of tax credits in excess of the amount of tax credits reserved for the owner under subsection (c), the owner may apply to the commission for issuance of tax credits in an amount equal to the excess. Applications for issuance of tax credits in excess of the amount of tax credits reserved for the owner shall be made on a form prescribed by the commission and shall represent a separate certificate that shall be issued, subject to all provisions regarding priority provided in this section.

(e) In order to obtain a credit against any state tax due that is specified in this chapter, a taxpayer shall file the tax credit certificate with the taxpayer's Alabama state tax return.

(f) The department shall grant a tax credit against any state tax due that is specified in this chapter to a taxpayer holding the tax credit certificate issued under subsection (d) or, in the case of a transferee, issued by the department pursuant to Section 40-9F-4(e) against any tax due under Chapters 16 and 18 in the amount stated on the tax credit certificate. The department shall have the right to audit and to reassess any credit improperly obtained by the owner, in accordance with the Taxpayers' Bill of Rights and the Uniform Revenue Procedures contained in Chapter 2A; provided, however that only the owner initially awarded the tax credit certificate, and not any subsequent transferee of the tax credit certificate or person to whom tax credits have been passed through pursuant to Section 40-9F-4(d), shall be liable for any credit improperly obtained by the owner.

(g) For processing the taxpayer's application for a tax credit, the commission may impose reasonable application fees of up to one percent of the qualified rehabilitation expenses but not to exceed ten thousand dollars (\$10,000).

(h) The commission shall, in consultation with the department, report to the Legislature in the third year following passage of this chapter, and annually thereafter, on the overall economic activity, usage, and impact to the state from the substantial rehabilitation of qualified structures for which tax credits have been allowed.

## **Section 40-9F-33**

### **Limitations on Tax Credits; Historic Income Tax Credit Account; Transfer or Assignment of Tax Credits**

(a) The state portion of any tax credit against the tax imposed by Chapter 18 for the taxable year in which the reservation is allocated to a project or the certified rehabilitation is placed in service shall be equal to 25 percent of the qualified rehabilitation expenditures for certified historic structures. No tax credit claimed for any certified rehabilitation may exceed five million dollars (\$5,000,000) for all allowable property types.

(b) There is created within the Education Trust Fund a separate account named the Historic Preservation Income Tax Credit Account. The Commissioner of Revenue shall certify to the Comptroller the amount of income tax credits under this section and the Comptroller shall transfer into the Historic Preservation Income Tax Credit Account only the amount from sales tax revenues within the Education Trust Fund that is sufficient for the Department of Revenue to use to cover the income tax credits for the applicable tax year. The Commissioner of Revenue shall distribute the funds in the Historic Preservation Income Tax Credit Account pursuant to this section.

(c) The entire tax credit must be claimed by the taxpayer for the taxable year in which the reservation is allocated to a project or the certified rehabilitation is placed in service. Tax credits shall not be claimed prior to the taxable year in which the certified rehabilitation is placed in service. Where the taxes owed by the taxpayer are less than the tax credit, the taxpayer shall be entitled to claim a refund for the difference. In the event that any additional credit is allocated to the taxpayer for a given project, the additional credit must be claimed in the taxable year the additional credit is allocated to the taxpayer.

(d) (1) For the tax years 2018 through 2022, the aggregate amount of all tax credits that may be reserved in any one of such years by the commission and certification of rehabilitation plans under Section 40-9F-32(c) shall not exceed twenty million dollars (\$20,000,000), plus any amount of previous reservations of tax credits that were rescinded under Section 40-9F-32(c) during the tax year. However, if all of the allowable tax credit amount for any tax year is not requested and reserved, any unreserved tax credits may be utilized by the commission in awarding tax credits in subsequent years; provided, however, that in no event shall a total of more than two hundred million dollars (\$200,000,000) be reserved by the commission during the period from May 25, 2017, through December 31, 2022, pursuant to this article. Applications shall not be received by the commission after the Historic Tax Credit Evaluating Committee has ranked projects with a total amount exceeding two hundred million dollars (\$200,000,000).

(2) For the tax years 2023 through 2027, the aggregate amount of all tax credits that may be reserved in any one of such years by the commission and certification of rehabilitation plans under Section 40-9F-32(c) shall not exceed twenty million dollars (\$20,000,000), plus any amount of previous reservations of tax credits that were rescinded under Section 40-9F-32(c) during the tax year. However, if all of the allowable tax credit amount for any tax year is not requested and reserved, any unreserved tax credits may be utilized by the commission in awarding tax credits in subsequent years; provided, however, that in no event shall a total of more than two hundred million dollars (\$200,000,000) be reserved by the commission during the period from May 25, 2017, through December 31, 2027, pursuant to this article.

(3) For tax years 2023 through 2027, no tax credits shall be reserved for qualified structures the end use of which is proposed to be a disqualifying use.

(4) For purposes of this article, "tax year" shall mean calendar year.

(5) In addition to the limits in subdivision (2), for tax years 2024 through 2027, the commission may utilize an additional amount up to a total of five million dollars (\$5,000,000) to reduce the backlog of qualified applications.

(e) Of the annual amount of the tax credits provided for in subsection (d), 40 percent shall be reserved to taxpayers with a certified rehabilitation project located in a county in which the population does not exceed 175,000 according to the most recent federal decennial census. In the event applications are not received and credits are not allocated for projects in these areas by the close of the third quarter of the program year, the funds may revert for allocations of other project applications.

(f) Tax credits granted to a partnership, a limited liability company, S corporations, trusts, or estates, shall be claimed at the entity level and shall not pass through to the partners, members, or owners.

(g) All or any portion of the income tax credits under this section and Section 40-9F-32 shall be transferable and assignable, subject to any notice and verification requirements to be determined by the department, without the requirement of transferring any ownership interest in the qualified structure or any interest in the entity which owns the qualified structure. Any tax credits transferred shall be at a value of at least 85 percent of the present value of the credits. However, once a credit is transferred, only the transferee may utilize the credit and the credit may not be transferred again. A transferee of the tax credits may use the amount of tax credits transferred to offset any income tax under Chapter 18. The entire tax credit must be claimed by the transferee for the taxable year in which the reservation is allocated to a project or the certified rehabilitation is placed in service. When the taxes owed by the transferee are less than the tax credit, the transferee shall be entitled to claim a refund for the difference. The department shall adopt a form transfer statement to be filed by the transferor with the department prior to the purported transfer of any credit issued under this article. The transfer statement form shall include the name and federal taxpayer identification number of the transferor and each transferee listed therein along with the amount of the tax credit to be transferred to each transferee listed on the form. The transfer statement form shall also contain any other information as the department may from time to time reasonably require. For each transfer, the transferor shall file: (1) a completed transfer statement form; (2) a copy of the tax credit certificate issued by the commission documenting the amount of tax credits which the transferor intends to transfer; (3) a copy of the proposed written transfer agreement; and (4) a transfer fee payable to the department in the amount of one thousand dollars (\$1,000) per transferee listed on the transfer statement form. The transferor shall file with the department a fully executed copy of the written transfer agreement with each transferee within 30 days after the completed transfer. Filing of the written transfer agreement with the department shall perfect the transfer with respect to the transferee. Within 30 days after the department's receipt of the fully executed written transfer agreement, the department shall issue a tax credit certificate to each transferee listed in the agreement in the amount of the tax credit so transferred. The certificate shall be used by the transferee in claiming the tax credit pursuant to subsections (e) and (f) of Section 40-9F-32. The department may adopt additional rules as are necessary to permit verification of the ownership of the tax credits, but shall not adopt any rules which unduly restrict or hinder the transfer of the tax credits.

*(Act 2017-380, §4; Act 2021-431, §1; Act 2023-522, §1.)*

## **Section 40-9F-34**

### **Recapture of credits; assessment.**

(a) Recapture of any of the credit shall apply against the taxpayer who utilizes the credit, and any required adjustments to basis due to recapture, shall be governed by Section 50 of the Internal Revenue Code.

(b) In the taxable year the certified rehabilitation is placed in service for any structure for which a tax credit has been issued, the commission shall provide notice of the certified rehabilitation and a copy of the appraisal provided by the owner to the taxing authority responsible for the assessment of ad valorem taxes. Upon notification, the taxing authority responsible for the assessment of ad valorem taxes shall complete a new assessment for the structure to be used in the assessment of ad valorem taxes for the tax year in which the certified rehabilitation was placed in service.

*(Act 2017-380, §5)*

## **Section 40-9F-35**

### **Appeals.**

Owners or their duly authorized representatives may appeal any state official decision, including all preliminary or final reservations, approvals, and denials, made by the commission or the department with regard to an application and rehabilitation plan submitted under Section 40-9F-3, in accordance with the Alabama Administrative Procedure Act contained in Chapter 22 of Title 41. Appeals shall constitute an administrative

review of the decision appealed from and shall not be conducted as an adjudicative proceeding. Appeals shall be submitted within 30 days of receipt by the owner or the owner's duly authorized representative of the decision that is the subject of the appeal.

*(Act 2017-380, §6.)*

## **Section 40-9F-36**

### **Availability of Tax Credits after December 31, 2022.**

The tax credits authorized by this article for the substantial rehabilitation of qualified structures shall not be available to owners of qualified structures that submit an application and rehabilitation plan after December 31, 2027. No action or inaction on the part of the Legislature shall reduce or suspend the tax credits authorized by this article in any past or future calendar year with respect to a qualified structure if the owner thereof submits an application and rehabilitation plan with the commission and the commission reserves an allocation for a tax credit on or prior to December 31, 2027, even if the qualified structure is placed into service after December 31, 2027, and shall not affect the owner of a qualified structure if the commission has reserved an allocation for a tax credit on or prior to December 31, 2027. Notwithstanding any other provision of this chapter, any application received by the commission, other than an application for a qualified structure the end use of which is proposed to be a disqualifying use, in active status on the ranking list of the Historic Tax Credit Evaluating Committee or granted a tax allocation reservation prior to May 14, 2021, shall remain on the ranking list or in reservation status and shall receive a tax credit allocation reservation or a tax credit allocation, as the case may be, when additional credits become available, including in any tax year commencing after 2022.

*(Act 2017-380, §7; Act 2021-431, §1.)*

## **Section 40-9F-37**

### **Rulemaking Authority; Acceptance of Applications**

The commission shall promulgate by October 1, 2017, any and all rules and regulations necessary to implement this article. Applications for the reservation of tax credits shall be accepted beginning November 1, 2017.

*(Act 2017-380, §8.)*

## **Section 40-9F-38**

### **Historic Tax Credit Evaluating Committee**

(a) There is established the Historic Tax Credit Evaluating Committee, which shall review qualifying projects, approve credits for projects, and rank projects in the order in which the projects should receive tax credit reservations based on criteria established by the commission. The commission shall establish a review cycle for the committee beginning on January 1, 2018, provided that the committee shall meet at least quarterly unless no credits remain to be allocated. The Commissioner of Revenue shall be a nonvoting member of the committee and provide advisory and technical support. The committee shall consist of the following:

- (1) The Director of the Alabama Office of Minority Affairs.
- (2) The Executive Director of the Alabama Historical Commission.
- (3) The Finance Director.
- (4) The Director of the Alabama Department of Economic and Community Affairs.
- (5) The Secretary of Commerce.

(6) Two members of the Alabama House of Representatives, at least one of whom shall be a member of the minority party, to be appointed by the Speaker of the House of Representatives.

(7) Two members of the Alabama Senate, at least one of whom shall be a member of the minority party, to be appointed by the President Pro Tempore of the Senate.

(8) The Chair of the Senate Finance Taxation Education Committee or his or her designee.

(9) The Chair of the House Ways and Means Education Committee or his or her designee.

(b) (1) The Alabama Historical Commission shall adopt rules that shall set forth guidelines to be used by the committee in determining the allocation of credits. The guidelines shall set forth factors to be considered by the committee including all of the following:

- a. The relative value of the proposed project to the particular community, including the maintenance of the historic fabric of the community.
- b. The possible return on investment for the community in which the proposed project is located.
- c. The geographic distribution of projects.
- d. The likelihood of the project proceeding without the historic tax credit authorized in this article.
- e. The strength of local support for the proposed project.
- f. The leveraged investment ratio of the project, as determined by the total project investment divided by the amount of tax credits requested.
- g. The number of net new jobs the project will create in the state.
- h. The amount of overall project financing for which the applicant has firm, secured commitments prior to submitting its application.

(2) Included in the information to be required for the evaluation submitted in the application of any project shall be any additional tax credits or state, federal, or local government grants that the applicant expects to utilize for the construction of the project.

(3) The committee shall establish a minimum threshold that a project must exceed before the project may be funded by the committee.

(c) The committee may meet in person, remotely, or by using a hybrid model where some members attend in person and others attend remotely, pursuant to Section 36-25A-5.1.

*(Act 2017-380, §9; Act 2021-431, §1; Act 2022-402, §1; Act 2023-522, §1.)*